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IN THE

Supreme Court of the United States

October Term, 1924. No. 770.

CHANG CHAN *et al.*,

v.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Motion for Leave to file Brief as *Amicus Curiae*, and Proposed Brief of *Amicus Curiae*

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ERRATA.

P. 11, lines 28–29: For "(Section 4 [a])" read "(Section 4 [b])".
P. 12, line 3: For "(Section 4 (a))" read "(Section 4 [b])".
P. 12, line 13: For "Section 4 (b)" read "Section 4 (d)".
P. 15, lines 20–24: Rewrite to read thus:

> The application is made to the Commissioner General. Under Section 9 (e), if he finds the facts stated in the petition to be true,
>
> > "he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize"
>
> the proper consular officer to issue an immigration visa to such immigrants as non-quota immigrants under subdivision (a) of Section 4. This is the only machinery provided for

Outline of Argument.

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IN THE

Supreme Court of the United States

October Term, 1924.

CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, JING HING WAH, CHAN SHEE, KON SHEE, WONG SHEE and NG YUET SEUNG, *against* JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.	No. 770.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*;

also

BRIEF SHOWING THAT THE QUESTIONS CERTIFIED BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, SHOULD BE ANSWERED IN THE NEGATIVE.

Now comes HENRY W. TAFT, an Attorney and Counsellor of this Court and represents that there are involved in the above entitled case questions arising under the Immigration Act of 1924, approved May 26, 1924 (43 Stat. 153, c. 190), an answer to which may vitally affect the interests and status of a number of his clients who

would be seriously prejudiced by a decision affirming the position taken below by the Commissioner of Immigration and by the Government.

Therefore, he prays leave to file a brief and argument as *amicus curiae* to the end that the questions certified by the Circuit Court of Appeals be answered in the negative. He is permitted by counsel for the petitioner and by counsel for the United States herein to say that they have no objection to the granting of such leave.

The brief and argument proposed to be submitted is as follows:

Statement.

The decision of the District Court for the Northern District of California, Southern Division thereof, Second Division, upheld the right of the petitioners to admission into this country under the Immigration Law of 1924 because they were Chinese wives of American citizens, but the Court refused to order admission because the petitioners had not procured, under Section 9 of the Act, an immigration visa. The first four appellants are the husbands (the petitioners) and the last four appellants are the petitioning wives (the detained). A petition was filed for a writ of *habeas corpus* for the release of the detained wives, and for a determination that the detained were entitled to the right of permanent admission into the United States on the ground that their husbands were respectively citizens of this country and permanently domiciled therein (Rec., p. 1). A hearing was not accorded to the petitioners by the Commissioner of Immigration, but a Board of Special Inquiry made an examination after which it denied them admission under the provisions of the Immigration Act of 1924, which became effective July 1, 1924, after the date of the respective marriages of the appellants (Rec., p. 2). An appeal from the decision of the Board to the Secretary

of Labor was dismissed. The decisions in all the cases were substantially the same, and to the following effect:

> "Neither the citizenship of the alleged husband, nor the relationship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the Department has no alternative than to recommend exclusion." Decision of the Secretary of Labor, quoted by the District Court (2 Fed. [2d], 995, 996), and by the Circuit Court of Appeals (Rec., p. 2).

The petitions were based upon the claim that the effect of this interpretation of the Immigration Act of 1924 was in violation of the "treaty, statutory and constitutional rights of appellants, who are citizens of the United States, and their wives who were and are persons of the Chinese race." (Rec., p. 2). The petitions were amended by filing the original immigration records, and a general demurrer was interposed in each case which was sustained by the lower court on October 25, 1924; and the court thereupon refused to issue the writs of *habeas corpus* as prayed for and denied the petitions. (2 Fed. [2d] 995). The District Judge disapproved the ground of rejection of the Secretary of Labor, and held that Chinese women ineligible to naturalization who had, before the passage of the Act, become the wives of citizens of the United States, were entitled to admission under the terms of the Immigration Act of 1924, but he denied the petition upon the ground that the wives had not procured immigration visas under Section 9, subdivisions (b), (c) and (d). (Rec., p. 2.)

On July 1, 1924, when the Immigration Act became effective, the petitioning wives were upon the high seas destined for the United States.

One of the rules and regulations promulgated by the Commissioner General of Immigration under the Act of 1924, provided as follows:

> "Under the new law no Chinese alien wife or alien child of the Chinese race, of an American citizen is admissible solely because of such relationship to such person."

Under this provision it was impossible for the petitioning husbands of the Chinese wives, to procure an immigration visa, and it would have been ineffective if presented under the regulation above referred to.

When, upon appeal, the foregoing facts were presented to the Circuit Court of Appeals for the Ninth Circuit, that Court did not decide the case but certified the following question under Section 239 of the Judicial Code (Rec., p. 4):

"1. Should the petitioners be refused admission to the United States either,
   (a) Because of the want of a visa; or
   (b) Because of want of right of admission if found to be Chinese wives of American citizens."

POINT I.

The petitioning wives had the right, under the provisions of Subdivision (a) of Section 4 of the Act of 1924, to enter the United States by virtue of the fact that their respective husbands were citizens of this country.

1. Rights of Chinese wives and children of American Citizens prior to the passage of the Act of 1924.

Chinese wives of American citizens before the passage of the Act of 1924, under the decisions of the courts,

had the right of entry into the United States. The leading case on the subject is *Tsoi Sim* v. *United States,* 116 Fed. 920 (C. C. A., 9th Circuit, 1902). The case came before the Court on appeal from a judgment of deportation entered after the plaintiff in error had been found to be a "Chinese manual laborer * * * now within the limits of the Northern District of California * * * without the certificate of residence required by the act of Congress" (28 Stat. 7, c. 14). The plaintiff in error was the wife of an American citizen and the Circuit Court of Appeals construed the statute as not applying to one in her situation on the broad ground that no specific intention on the part of Congress to separate a wife from her husband could be found in the statute and that the case was a proper one for the application of the general rule announced in *Holy Trinity Church* v. *United States,* 143 U. S. 457, 460 (1892) to the effect that statutes should be so construed as to avoid an unreasonable and absurd result. Judge Hawley went on to say (p. 925):

> "It being the law that the wife and children of a Chinese merchant are permitted to remain in this country because the domicile of the wife and children is that of the husband and father, as was expressly held in *Re Chung Toy Ho,* (42 Fed. 398) and approved by the Supreme Court in *U. S.* v. *Mrs. Gue Lim,* (176 U. S. 459) upon what method of legal reasoning can it be held that the wife of an American citizen is not entitled to the same 'rights, privileges, and immunities' under the law? The Chinese merchant does not stand upon a higher plane than the Chinaman who is born of parents, of Chinese descent, having a permanent domicile and residence in the United States. On the contrary, the native born, by virtue of his birth, becomes a citizen of the United States, and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and

> privileges of the marriage relations. *These are her, as well as his, natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country.*"

Prior to the passage of the Act of 1924, the question arose as to whether wives and children of Chinese merchants were entitled to the privilege of entry into this country conferred by the Treaty of 1880 (22 Stat. 826) upon the merchants themselves. This question was answered in the affirmative by most of the lower federal courts that considered it, and eventually by this Court; and the views expressed in the opinions indicate a liberality of interpretation of treaty rights of wives and children of admissible aliens, based upon considerations which are not without weight in considering the rights of wives under the Act of 1924 who claim admission by virtue of the citizenship of their husbands.

In *United States* v. *Mrs. Gue Lim,* 176 U. S. 459, (1900), this Court took the view that "it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission, meant that they should be excluded" (p. 466). The Court expressly approved the reasoning of Deady, D. J., in the case of *In re Chung Toy Ho,* 42 Fed. 398 (C. C. Ore., 1890). In that case, Judge Deady, calling attention to the provision of the treaty by which a Chinese merchant might bring his "body and household servants with him into the United States", proceeded (pp. 399, 400):

> "It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the

> concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France.
>
> * * * * * * *
>
> "My conclusion is that under the treaty and statute, taken together, a Chinese merchant who is entitled to come into and dwell in the United States is thereby entitled to bring with him, and have with him, his wife and children. *The company of the one, and the care and custody of the other, are his by natural right; and he ought not to be deprived of either, unless the intention of Congress to do so is clear and unmistakable.*" (Italics ours.)

In *Yee Won* v. *White*, 256 U. S. 399, 400 (1921), this Court approved the decision in the *Gue Lim* case as having established the proposition that the wife of a Chinese merchant could not be excluded under the treaty "since this would obstruct the plain purpose of the treaty of 1880 to permit merchants freely to come and go" (p. 401).

These decisions indicate the liberality with which the courts have viewed the rights of alien wives and children of husbands who in any capacity are themselves entitled to live in this country. Nothing in *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310 (1924), affects the principle on which these cases were decided, as that case did not involve treaty rights. An express provision in the 1917 Act (39 Stat. 874, c. 29) exempted from the excluding provisions "ministers * * * their legal wives or their children" only when such ministers were immigrating from the barred Asiatic zone. But Gottlieb came not from the Asiatic zone but from Palestine.

Furthermore, he could not successfully invoke the 1921 Acts (42 Stat. 5, c. 8; 42 Stat. 540, c. 187), since the pertinent exemption of these acts applied to "ministers of any religious denomination" without mentioning their wives and children; and neither the other provisions of the Act of 1917, nor its legislative history, justified a construction of the statute more broad than its plain language required.

If the provisions of the Act of 1924 are construed in the spirit of liberality which led to the decision in the *Tsoi Sim* case, there is no difficulty in arriving at the conclusion that the wives and children of the petitioners are admissible under the provisions of subdivision (a) of Section 4 of the Act; and this interpretation is in consonance with expressions of Congressional intent contained in reports of the House Committee on Immigration and Naturalization referred to below.

2. An analysis of the provisions of the Act does not show any intention to limit the plain meaning of subdivision (a) Section 4, under which the Chinese wives and children of the petitioners would be admissible to this country.

Section 4 provides as follows:

> "Non-Quota Immigrants.
>
> "Sec. 4. When used in this Act the term 'non-quota immigrant' means:
>
> "(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;"

Under familiar principles of law it will be presumed that Congress was aware of the judicial interpretation to which we have called attention above, by which in effect the Chinese wives and children of American citizens were themselves held to be vested with the same

right to dwell in this country as that enjoyed by the husbands and fathers. But the Government claims that the right previously existing was expressly taken away by subdivision (c) of Section 13, which provides as follows:

> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

An answer to this claim of the Government involves a consideration of the general purpose of the Act of 1924.

In a brief to be submitted in *Cheung Sum Shee et al.* v. *John D. Nagle,* No. 769, we deal with the general policy underlying the provisions of the Immigration Act of 1924 with reference to the exclusion of aliens. We take the liberty of referring the Court to the analysis of the statute contained in that brief, at pp. 6 *et seq.*

The exclusion of aliens is provided for in the Act of 1924 upon two principles which are not interdependent. The policy dictating the one is different from that upon which the other is based. The quota plan of limiting immigration was in force under the Immigration Law of 1921, and was more fully developed under the Act of 1924. It establishes a limitation of the number of admissible aliens by fixing quotas with reference to percentages of persons already lawfully within this country, and who are of the same nationality or of the same national origin as those seeking admission. The class excluded on the other principle, that is, because they were "ineligible to citizenship" are principally members of Oriental races who have been deprived of the right of becoming American citizens be-

cause they are not "free white persons" or "aliens of African nativity" or "persons of African decent." (Section 2169 R. S., and other laws enumerated in Section 28 (c) of the Act of 1924, as construed in *Ozawa* v. *United States,* 260 U. S. 178 [1922]).

Sections 2, 4, 5, 6, 7, 8, 9, 11, 12, 16 and 18, all relate to the quota system. The only sections which could in any view relate to exclusion on account of ineligibility to citizenship are Sections 3, 5, 13, 15, 25 and 28, and of these the only ones of much importance in relation to that subject are Sections 3 and 13. General provisions relating to burden of proof, rules and regulations and penalty provisions are not relevant in the present discussion. The attempted merger in one Act of provisions relating to the two systems of exclusion has led to some confusion in phraseology.

Bearing in mind the general nature of the two principles referred to, we propose to examine the rights of the petitioners under subdivision (a) of Section 4 of the Act.

Section 4 is the first of the sections specifically relating to quota immigrants. Its purpose is to exclude from the quota count certain specified immigrants. But the exclusion is not in any of the cases provided for based upon ineligibility to citizenship. Section 13, on the other hand, is entitled "Exclusion from United States," and obviously is intended to cover exclusion in all cases whether under the quota system or as a result of ineligibility to citizenship.

Subdivisions (b), (d) and (e) of Section 13 relate to temporary and special cases, which need not be especially dealt with, excepting that subdivision (d) of Section 13 will be referred to in connection with Point II.

The argument for the exclusion of the wives and children in this case is based by the Government upon the

provisions of subdivision (c) of Section 13 which provides as follows:

> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

The first noticeable feature of this provision is that among the exceptions to exclusion on account of ineligibility to citizenship, it omits to include the case of the "unmarried child under 18 years of age, or the wife of a citizen" who were provided for in subdivision (a) of Section 4. The question thus arises: Why was it necessary to make an exception in the case of non-quota immigrants referred to in subdivisions (b), (d) and (e) of Section 4, and not in the case of the wife and child of a citizen provided for in subdivision (a) of that Section? This requires a consideration of the scope and purpose of Sections 4 and 13.

Section 4 provides for non-quota immigrants, without reference to their "eligibility to citizenship." Under former immigration laws and under the provisions of existing treaties, there had occurred instances of aliens "lawfully admitted to the United States" (Section 4 [a]) who were ineligible to citizenship under the provisions of Section 2169 R. S., confining the privilege of citizenship to "free white persons", "aliens of African nativity", or "persons of African descent".* It was not

* It is well known that prior to the passage of the Chinese Exclusion Act (23 Stat. 115 c. 220), there were thousands of aliens in this country who were incapable of being naturalized. This appears from the observations of this Court in the *Chinese Exclusion case*, 130 U. S. 581, 594-596 (1889), read in the light of decisions under U. S. R. S., Sec. 2169, such as *In re Ah Yup*, 5 Sawyer 155 (C. C. Cal., 1878).

the purpose of the Act of 1924 to compel a deportation of such aliens or prevent them from "returning from a temporary visit abroad" (Section 4 (a)). It therefore became necessary to exempt them from that provision of subdivision (c) of Section 13, which declared that "no alien ineligible to citizenship shall be admitted to the United States." Ministers, professors, etc., and their wives and unmarried children under 18 years of age, and students entering the United States for the purpose of study, etc., were not to be counted in the quota, and as a matter of long established policy were to be admitted although ineligible to citizenship and exceptions were necessary in their cases (Section 4 (b) and (e) and Section 13 (c)). But a similar exception was not necessary in the case of the wife and child of a citizen of the United States because under the law as it had then been interpreted (particularly in *Tsoi Sim* v. *United States, ante,* p. 5), the alien wife and child of a citizen of the United States even though "ineligible to citizenship" had a derivative right of entry into this country because the citizen himself had such right. Furthermore, if we regard Section 4 (a), Section 9 and Section 13 (a) (3) as provisions under the quota system especially designed to cover the case of a wife of a United States citizen, we shall find a sensible reason for omitting, because it would be unnecessary, an exception in her case in subdivision (c), Section 13.

It would be a violent assumption in the absence of "clear and unmistakable" language and a consistent purpose, shown by apt provisions, to say that the well established right, recognized in Section 4 (a) by specific exemption from quota limitation, should be taken away from a citizen and his family by the omission to exempt it in Section 13. It would be more reasonable to say that Congress meant to allow American citizens and their families to retain the status which the courts had held that they had before.

Further reasons may be adduced in answer to the claim of the Government.

(a) There can be no sound reason based upon policy for excluding the alien family of an American citizen while admitting (1) the wife and child of a Chinese merchant not eligible to citizenship (as we show in our brief in No. 769 that the Act does), or (2) the family of an immigrant provided for in subdivision (d) of Section 4, equally ineligible, perhaps, because a member of an Oriental race. There is certainly as much reason for regarding the family of a citizen of the United States as a part of the *citizen* class, as there is for classifying the family of a Chinese *merchant* as one of the merchant class or the wife of a professor as of the *academic* class. Before the passage of the Act of 1924, in construing the existing treaties providing for the admission of the families of Chinese merchants, the courts were influenced by the humane consideration that the company of a wife and the care and custody of a child, are the possession of the husband and father "by natural right; and he ought not to be deprived of either, unless the intention of Congress to do so is clear and unmistakable." *United States* v. *Mrs. Gue Lim, ante,* pp. 6-7. To exclude the families, this Court said in *Yee Won* v. *White,* 256 U. S. 399, 401, (1921), "would obstruct the plain purpose of the Treaty of 1880 [22 Stat. 826] to permit merchants freely to come and go." When the question came up as it did in the *Tsoi Sim* case, *supra,* the same considerations led the courts to admit the wife of an American citizen, although she was of the Chinese race. The court contrasted the status of a Chinese merchant and an American citizen if the family of the one is to be admitted and of the other to be excluded, adding (116 Fed., at p. 925):

> "The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of

> the marriage relations. These are her, as well as his, natural rights. By virtue of her marriage the husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country."

These considerations are just as weighty now as they were before the passage of the Act of 1924, and the result of discriminating against the wife and child of an American citizen in the manner indicated above would be just as absurd now as it was before, and the courts have repeatedly refused to construe statutes of this character so as to have that result. *Lau Ow Bew* v. *U. S.*, 144 U. S. 47 (1892); *Holy Trinity Church* v. *U. S.*, 143 U. S. 457 (1892).

(b) If we attribute to Congress the intention to cover in subdivision (c) of Section 13 cases where admission is not sought because of the citizenship of a husband and father because that case is sufficiently taken care of in subdivision (a) of Section 13, we shall avoid a conflict with the plain words of subdivision (a) of Section 4, by which the family of a citizen of the United States may be admitted as a non-quota immigrant. In *Ex Parte Chiu Shee*, 1 Fed. (2d), 798 (D. Mass., 1924), Judge Lowell took the view that the provisions of the Act could be reconciled in that way. He said:

> "The omission of subdivision (a) of section 4 from the provisions of section 13 arose, not from a settled purpose of Congress to exclude such a wife, but from the fact that in considering section 13 Congress had only aliens in mind, and did not realize that the section as passed diminished the rights of American citizens, already carefully safeguarded by section 4 (a). * * * The discrepancy between section 4 (a) and section 13 (c) is thus reconciled by construing the latter provision as applying only to aliens who are not related to American citizens."

Judge Lowell's decision is cited with approval by the District Judge in the case at bar. 2 Fed. (2d) 995, 999.

(c) The quota provisions of the Act show that there was no intention to exclude the wife and child of an American citizen on account of their ineligibility to citizenship.

Subdivision (a) of Section 4 contemplates the "filing of a petition under Section 9." The latter section is entitled "Issuance of Immigration Visas to Relatives," and is the only provision of the Act for the issuance of an immigration visa on account of relationship. It requires the filing of a petition, not by the relative seeking admission but by the citizen claiming that an immigrant is his relative. It requires the petitioner to state the facts on which *his* citizenship is based, certain particulars in relation to his business, the degree of relationship to the immigrant, and that the petitioner will support the immigrant. *There is no statement required as to the nationality of the wife or child whose admission is sought.*

The application is made to the Commissioner General. If he finds "the *facts stated in the petition* to be true he may issue an immigration visa to each of the immigrants" as a non-quota immigrant under subdivision (a) of Section 4. This is the only machinery provided for in the Act for the admission of "the unmarried child under 18 years of age or the wife of a citizen of the United States who resides therein at the time of the filing of a petition under Section 9." There is no method by which the Commissioner can ascertain whether or not the immigrant "is ineligible to citizenship" under the provisions of subdivision (c) of Section 13. He may find on the allegations of the petition that the relative of the American citizen is "a non-quota immigrant" and thereupon authorize the issuance of an immigration visa to the immigrant as a relative of the petitioner without inquiring as to whether the immigrant is eligible to citizenship. It

is true that under subdivision (e), Section 9, he must authorize the consular officer to issue the immigration visa and that that document must (Section 2 [a]) specify the nationality of the immigrant. But if ineligibility to citizenship had been intended to bar the applicant, the Commissioner would have been authorized to deal with that subject and machinery would have been provided by which he would have found ineligibility and would thus have avoided the useless process of sending the matter back to the consular officer. If we assume that eligibility to citizenship has nothing to do with the admission of wives and children of citizens, no such incongruity exists.

(d) The foregoing interpretation of the Act receives strong confirmation from its legislative history. When the bill was first introduced (H. R. 6540), and committed to the Committee of the Whole on February 9, 1924, the Committee stated that it "exempts wives, children under 18, and parents over 55, of American citizens." (House Report No. 176, 68th Congress, First Session, p. 2). In reporting the bill in its later form the Chairman of the Committee on Immigration on March 24, 1924, repeated the above statement. (House Report No. 350, 68th Congress, First Session, p. 1). In the bill as ultimately passed (H. R. 7995), the exemption was extended to "the unmarried child under 18 years of age, or the wife, of a citizen of the United States" (Sec. 4 [a]). In their statement, after the bill had been agreed upon in conference with the Senate Committee, the Managers on the part of the House declared that the bill had been changed "by limiting the 'relative' clause to wives and children of American citizens." (House Report No. 716, 68th Congress, First Session, p. 19).

There is nothing in the legislative history to indicate an intention that the exemption should apply only to wives and children who are eligible to citizenship.

POINT II.

The failure of the petitioners to procure immigration visas under Section 9, subdivisions (b), (c) and (d), is not a sufficient ground for denying the relief prayed for.

The petitioning wives were non-quota immigrants (Section 4 (a)). Without an immigration visa which in the visa specified that fact, they were excluded under Section 13 (a) (3), *unless* they could bring themselves within the exception provided for in Section 13 (d), which provided as follows, viz.:

> "(d) The Secretary of Labor may admit to the United States any otherwise admissible immigrant not admissible under clause (2) or (3) of subdivision (a) of this section, if satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory * * *".

The petitioning wives were, before the passage of the Act of 1924, under the decisions referred to above, "otherwise admissible" within the meaning of subdivision (d). They had been married prior to the effective date of the Act, and at that date were on the high seas (Rec., p. 2). Presumably they came from a Chinese port. The Act of 1924 was approved May 26, 1924. The petitioners may have sailed from China before that date, or if they sailed afterward it may well be that they could not with "reasonable diligence" have "ascertained" whether under the recently passed and somewhat elaborate Act they had been deprived of the right of admission. The Secretary of Labor took a view of the case

which made an investigation of these facts immaterial and the petitioners have not had the opportunity to present them for a ruling under Section 13 (d). That opportunity should have been accorded to them by sending the case back to the Secretary of Labor for further hearing instead of denying the petition, so that if the facts justifying such action appeared he could have admitted the petitioners under Section 13 subdivision (d).

POINT III.

The questions certified should be answered in the negative in accordance with the foregoing views.

March 20, 1925.

Respectfully submitted,

HENRY W. TAFT,
Amicus Curiae.